



# Agenda Item

## City Council

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**Item #:** 10.3.

**7/13/2021**

**File #:** 21-0335

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Rick Otto, City Manager

**FROM:** Susan Galvan, Interim Community Development Director

### **1. SUBJECT**

Continued Public Hearing to consider Appeal No. 0555-21, Shannon Family Mortuary, 1005 E. Chapman Avenue. (Continued from June 8, 2021)

### **2. SUMMARY**

An appeal of the Planning Commission denial of Conditional Use Permit No. 3121-20 to establish a chapel in conjunction with a mortuary office for Shannon Family Mortuary, located at 1005 E. Chapman Avenue. This project was continued from the May 11, 2021 City Council meeting.

### **3. RECOMMENDED ACTION**

The City Council shall consider the record and such additional evidence as may be offered and may affirm, reverse or modify, in whole or in part, the action that was appealed.

### **4. FISCAL IMPACT**

None.

### **5. DISCUSSION AND BACKGROUND**

#### **Project Description**

The applicant, Shannon Family Mortuary, proposes to convert a portion of an existing 1,320 square foot professional office building into a chapel in conjunction with a mortuary office. Parking for visitors will be provided in the existing nine-space parking lot on-site and across N. Waverly Street at 911 E. Chapman Avenue, where the applicant has leased five parking spaces from Pacific Bell Telephone Company for overflow parking.

The subject property is zoned Office Professional (O-P). The property is located at the northeast corner of the intersection of E. Chapman Avenue and N. Waverly Street. It is adjacent to single-family residential properties to the north on Waverly Street, with offices and institutional use properties to the south, east, and west along Chapman Avenue (Attachment 2).

Shannon Family Mortuary has operated at their current location since March 2020. A Conditional Use Permit (CUP) was not required for the relocation of the business from its original location at 137 E. Maple Avenue to E. Chapman Avenue because the scope of business services provided was limited to administrative office services only, consistent with the allowable office uses in the Office Professional zone. At the time the business relocated, it was understood between City staff and the proprietor that no preparations of the deceased or memorial services would take place at this

location, as these services would require approval of a CUP. Following relocation, Shannon Mortuary returned to the City to initiate the Conditional Use Permit process in order to convert a portion of the office space to a chapel for on-site memorial services.

### **Summary of Hearings**

The proposal went before the Planning Commission on December 7, 2020, February 1, 2021, and April 5, 2021. Detailed information on the proceedings can be found in the staff reports and minutes for each meeting, included as Attachments 5 through 7.

At the December 7, 2020 meeting, the applicant presented their initial request for a 25-seat chapel in their building, allowing up to three memorial services per week from 9 a.m. to 7 p.m. (Attachment 5). The addition of the chapel within the existing building would increase the parking demand of the business, as the additional service will bring more visitors to the site above what is typical for an administrative office. Based on the floor plan and seating number presented at the meeting, the adjusted parking requirement was for twelve off-street parking spaces.

The project property has nine existing parking spaces. The applicant contracted with Pacific Bell Telephone Company to lease five parking spaces at 911 E. Chapman Avenue (a.k.a. the AT&T site) to provide additional parking for memorial services. The leased spaces are available at all times for use by Shannon Family Mortuary clients and visitors. Therefore, fourteen parking spaces would be available for the business.

The Planning Commission stated concerns that the frequency and size of the proposed memorial service use would have negative impacts to the residents living along N. Waverly Street. In the past, staff has received concerns from neighborhood residents about the potential for business parking encroaching into the residential areas adjacent to E. Chapman Avenue. The Planning Commission continued the application to the February 1, 2021 meeting and directed the applicant to revisit its proposed operation plan and perform additional outreach to the nearby residents to address neighbor concerns regarding on-street parking that were brought up during the public hearing. Two public comments were received regarding this item.

At the February 1, 2021 meeting, the applicant requested a continuance of the project to the April 5, 2021 meeting. The Planning Commission granted this request (Attachment 6). Three public comments were received regarding the item.

At the April 5, 2021 meeting, the applicant presented a revised request for the use of the chapel (Attachment 7). Instead of memorial services, the applicant proposed to use the chapel for private family ID viewings, with twelve fixed seats total. The hours of operation for the chapel were reduced to 8 a.m. to 5 p.m. Monday through Friday, with a maximum of two viewings allowed per week.

Based on the proposed floor plan and seating number, the adjusted parking requirements were for nine total off-street parking spaces. As proposed, the property meets the code required parking demand for the proposed mix of services, with nine parking spaces existing on the property and five additional leased parking spaces at the AT&T property.

It was the final opinion of the Planning Commission that, despite the proposed operational changes from the initial application, the proposed use was not compatible with the residential character of N. Waverly Street and that negative impacts to residences were unavoidable if the application was approved. The Planning Commission voted 5-0 to deny the project as presented. Eleven public comments were received regarding this item.

At the April 12, 2021 meeting, the Planning Commission approved Resolution No. PC 34-20 denying the project request on the Consent Calendar, with no additional discussion or public comment (Attachment 4).

### **Public Notification and Comment**

On November 25, 2020, the City mailed a Public Hearing Notice to a total of 76 property owners/tenants within a 300-foot radius of the project site and persons specifically requesting notice. The project site was posted in two locations with the notification on that same date. Given that the Planning Commission continuances were to a date certain, there was no additional direct notification mailed for subsequent Planning Commission hearing dates.

Over the course of the Planning Commission hearing dates, staff received letters of opposition from three residents on N. Waverly Street, four letters of support from residents on N. Waverly Street, and five letters of support from business owners on E. Chapman Avenue (Attachment 8).

On May 3, 2021, the City mailed a Public Hearing Notice for the May 11<sup>th</sup> City Council meeting to 76 property owners/tenants within a 300-foot radius of the project site and persons specifically requesting notice. A legal notice was also published in the Orange City News on April 29, 2021.

### **Appeal**

On April 20, 2021, the Planning Division received an appeal application from Councilmember Arianna Barrios, District 1 (Attachment 1). The following reasons were given for the appeal request:

- There are concerns the Commission may not have considered all the facts and may have erred in the denial.
- It is unclear if the denial was for a fifteen-seat or twelve-seat chapel.
- There is a similar use operating in the area that may provide facts helpful to this request that were not included in the use analysis. It may also provide additional options or conditions of approval helpful in making the findings to approve the CUP.
- The public record indicates some of the facts used to make the denial findings may not be correct and the Commission deliberation on this matter was confusing and conflicting.

Pursuant to OMC Section 17.08.050.F, the City Council has the authority to consider the record and such additional evidence as may be offered and may affirm, reverse or modify, in whole or in part, the action that was appealed. The Council may also make or substitute additional decisions or determinations as it finds warranted under the provisions of the municipal code.

The applicant, Shannon Family Mortuary has submitted a letter on July 8<sup>th</sup> (the day of the posting of the July 13<sup>th</sup> agenda) requesting a temporary alternative to the CUP process. After meeting with the neighborhood, the applicant is seeking a Temporary Use Permit (TUP) with a number of new conditions. Given the late date of the letter, staff will assess whether a TUP is a viable alternative to the entitlements. A memo will be provided to the City Council prior to the meeting.

## **6. ATTACHMENTS**

- Attachment 1 - Appeal Application from Councilmember Arianna Barrios
- Attachment 2 - Vicinity Map
- Attachment 3 - Site Plan and Floor Plan

- Attachment 4 - Planning Commission Resolution No. PC 34-20
- Attachment 5 - Staff Report and Minutes from the December 7, 2020 Planning Commission Meeting
- Attachment 6 - Staff Report and Minutes from the February 1, 2021 Planning Commission Meeting
- Attachment 7 - Staff Report and Minutes from the April 5, 2021 Planning Commission Meeting
- Attachment 8 - Public Comments from all Public Hearings
- Attachment 9 - Email from Charles Link, Shannon Family Mortuary, dated May 3, 2021
- Attachment 10 - July 7, 2021 Letter from Shannon Mortuary